Filed 8/24/04 Vanessa R. v. Superior Court CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

VANESSA R., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES et al., Real Parties in Interest.	B174838 (Los Angeles County Super. Ct. No. CK52590)

ORIGINAL PROCEEDING in mandate. (Cal. Rules of Court, rule 39.1B) Daniel Zeke Zeidler, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Donna Wright Bernstein for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, Larry Cory, Assistant County Counsel, and Judith A. Luby, Senior Deputy County Counsel, for Real Party in Interest Los Angeles County Department of Children and Family Services.

Petitioner Vanessa R. (mother) is the mother of two children, who were less than three years old when the Los Angeles County Department of Children and Family Services (Department) detained them because of a concern for their well-being. After a contested six-month review hearing, the juvenile court found that mother had not regularly participated or made substantive progress in the court-ordered treatment plan and that there was no substantial probability the children could be returned to mother within the next six months. The court terminated family reunification services for mother and scheduled a hearing for the selection and implementation of a permanent plan for the children. (Welf. & Inst. Code, § 366.26.)[1]

Mother seeks writ relief (Cal. Rules of Court, rule 39.1B), claiming there is no substantial evidence to support the juvenile court's finding regarding the likelihood of reunification. She also claims the juvenile court considered only whether there was a substantial probability of reunification within the five months remaining until the 12-month review hearing, not whether there was a substantial probability of reunification within six months as required by statute. We reject mother's contentions. Accordingly, we deny the petition.

FACTUAL AND PROCEDURAL HISTORY

In June 2003, 20-year-old mother and her two children--two and a half-year-old L.C. and one-year-old K.R.--were living in the home of mother's mother (maternal grandmother).[2] At that time, the Department received reports alleging that mother verbally abused the children when she was under the influence of drugs and often left the house for days at a time, leaving the maternal grandmother to care for the children. When a Department social worker visited the maternal grandmother's home, mother admitted using methamphetamines since the age of 14. She also admitted using methamphetamines about a month earlier and leaving her children with the maternal grandmother on a couple occasions

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1 All statutory references are to the Welfare and Institutions Code.

2 Also living in the home were three additional children (ages 11 through 16) of the maternal grandmother.

for about four days, but she claimed she was clean. Mother stated she was willing to get help, and she agreed to submit to random drug testing and accept family preservation services. Mother signed a document stating she would submit to drug testing within 10 days and that failure to do so could result in the children being detained. A few days later, she signed a voluntary case plan under which she was to receive substance abuse counseling and undergo random drug testing.

On July 1, 2003, the maternal grandmother notified a Department social worker that mother had been gone for four days and had been arrested for grand theft auto the day before. When the social worker was able to speak with mother eight days later, mother stated that the police had released her without pressing charges. Mother denied doing drugs, though she admitted a couple days later that she had smoked marijuana. The social worker arranged a drug test for mother, and she tested positive for amphetamines, methamphetamines and cannabinoids.

On July 14, 2003, a day after receiving the positive drug test results, the Department detained the children and placed them in foster care. The Department then filed a dependency petition under section 300, alleging mother was incapable of caring for the children and was placing them at risk because of her history of, and current, drug use, and because she often left the children with the maternal grandmother for days at a time without making plans for their ongoing care and supervision.

At the conclusion of a detention hearing on July 17, 2003, the court found the Department had made a prima facie case for detention.[3] The court authorized mother to have twice-weekly monitored visits with the children. The court also authorized the children to remain with the maternal grandmother for a visit pending the next court hearing, provided mother was not living in the home. In early August 2003, after receiving

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[3] At the time of the detention hearing, and during most of the dependency proceedings discussed below, the whereabouts of the children's father were unknown. Father is not a party to this writ proceeding.

additional reports about the maternal grandmother's home, the court ordered the children placed in shelter care.

In late August 2003, the Department reported that mother's whereabouts were unknown. A social worker spoke with mother by telephone in mid-August, and mother stated she intended to enroll in a drug rehabilitation program. Mother promised to call back the social worker, but she failed to do so.

In late September, the Department reported that mother's whereabouts were still unknown. Earlier that month, the maternal grandmother advised a Department social worker that she had not had any recent contact with mother and did not know where mother was residing.

On September 24, 2003, the court sustained the dependency petition and ordered reunification services for the mother. The case plan included drug rehabilitation with random drug testing, as well as parent education classes. The court scheduled a six-month review hearing (§ 366.21, subd. (e)) for March 17, 2004, and a 12-month review hearing (§ 366.21, subd. (f)) for September 15, 2004.

In anticipation of the six-month review hearing, the Department reported in March 2004 that mother's whereabouts were again unknown. According to the report, however, a Department social worker spoke with mother in late October 2003, explained the time frames for reunification, and gave mother referrals for drug rehabilitation and parenting classes. Later that day, mother contacted the social worker and told her she had contacted a drug rehabilitation program and would go there the following day. The social worker asked mother to call and let her know in which program she had enrolled. Mother did not return the call, and the social worker was unable to make contact with her again until mid-January 2004, when the social worker called the maternal grandmother and mother was at the home. Mother again stated she had contacted a drug treatment program and said she was going to go there the following day. The social worker told mother she had to call and advise the social worker that she had enrolled in the program, so the social worker could refer mother for drug testing. Again, mother failed to call back the social worker.

The Department social worker called the maternal grandmother in late February 2004 and was told mother was at the residence. The social worker asked to speak with mother, but mother refused to talk to her.

According to the Department's report, the Department social worker sent letters with referrals to mother at various addresses (including the maternal grandmother's address) every month from October 2003, but mother did not respond. The report noted that mother had not made herself available to the social worker to schedule visitation with the children. According to the report, however, mother visited the maternal grandmother's home once or twice a month to be with the children.

The Department recommended that the court terminate reunification services for mother and schedule a hearing for the selection and implementation of a permanent plan for the children.

Mother did not appear for what was supposed to be the six-month review hearing on March 17, 2004. However, the maternal grandmother was present and advised the court that mother was in custody. The court continued the matter to April 16, 2004.

The Department reported in anticipation of the rescheduled six-month review hearing that mother was incarcerated at the Twin Towers jail. The social worker spoke with the maternal grandmother about arranging for the children to visit mother in jail, but the maternal grandmother said it would be difficult because, due to jail rules, only one child could be taken at a time. The maternal grandmother advised the Department social worker that mother had said she would be willing to enter a drug treatment program when she was released from jail.

Mother appeared for the contested six-month review hearing on April 16, 2004. Without objection, the court admitted into evidence the original and supplemental reports that the Department had submitted for the six-month review hearing, and it took judicial notice of the sustained petition, its prior orders, and its disposition case plan. The court then accepted a stipulation in lieu of direct testimony from mother. Mother's stipulated testimony consisted of (1) a statement that she planned to enroll in a substance abuse

program and had scheduled an appointment to go to such a program the following Monday, (2) a claim that, except for 56 days of incarceration, she had visited the children "probably two to three times a week," and (3) a request that the court order another six months of reunification services so she could prove she was able to stay clean and sober.

Mother's attorney conceded that mother had not participated in the case plan. However, mother's attorney declared that mother had "suddenly woke[n] up and she knows what she has to do." Mother's attorney also stated she would not waste anyone's time trying to argue the Department had not provided reasonable services. She argued, however, that the court could avoid setting a section 366.26 hearing if it found there was a substantial probability the children could be returned to mother within six months. Mother's attorney asked the court to make such a finding.

Counsel for the children stated that she did not think mother could remedy her long-standing drug problem within six months. She therefore asked the court to terminate reunification services. Counsel for the Department offered a similar view.

The court then found, among other things, that mother had not complied with the case plan, reasonable services had been provided, and there was "not a substantial probability [the children could be] return[ed] in the next period of review." The court terminated reunification services and scheduled a section 366.26 hearing.

Mother filed a timely writ petition challenging the juvenile court's order. She claims the court applied the wrong time frame when it determined there was no substantial probability she would reunify with the children. Mother claims that because the court stated there was no substantial probability of reunification "in the next period of review," the court was considering only the five months remaining until the 12-month review hearing, not the six months referred to in section 366.21, subdivision (e). Mother also claims that, assuming the court was considering the correct time frame, its decision was not supported by substantial evidence.

The Department filed an answer to the petition in which it opposed the granting of relief.

DISCUSSION

We review the juvenile court's findings of fact under the substantial evidence test, which requires us to determine whether there is reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged. (*In re Brian M.* (2000) 82 Cal.App.4th 1398; *Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470.) In so doing, we must resolve all conflicts in support of the juvenile court's determination and indulge all legitimate inferences to uphold the court's order. If substantial evidence exists, we must affirm the juvenile court's order. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020-1021; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820; *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547; *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

We begin with mother's contention that the juvenile court applied the wrong time frame when it determined there was no substantial probability she would reunify with the children. Section 366.21, subdivision (e), provides in pertinent part that "[i]f the child was under the age of three years on the date of the initial removal . . . and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal . . . may be returned to his or her parent or legal guardian *within six months* . . . , the court shall continue the case to the 12-month permanency hearing." (Italics added.) In *Dawnel D. v. Superior Court* (1999) 74 Cal.App.4th 393, 399, the Court of Appeal explained that "the plain language of the statute demonstrates the Legislature's intent that the court look at a full six-month period, regardless of when the twelve-month period would expire in a particular case . . . ."

The six-month review hearing in this case took place on April 16, 2004, one month after the date originally scheduled.[4] The 12-month review hearing was scheduled for September 15, 2004.

At the six-month review hearing, mother cited the applicable statutory provision (§ 366.21, subd. (e)) and noted that it allows for additional reunification services "[i]f there's a substantial . . . probability that the child may [be] returned to a parent within . . . six months, *the full six months*." (Italics added.) Mother's counsel asked the court make such a finding.

No one disagreed with the assertion of mother's counsel that the "full six months" is the applicable time frame. (Compare *Dawnel D. v. Superior Court, supra*, 74 Cal.App.4th at p. 397 [after asking the parties "what period of time it should examine to determine whether there was a substantial probability [the child] would reunify with [mother] if more services were provided[,]" court looks only "at the time remaining before the 12-month review hearing had to be scheduled"].) On the contrary, counsel for the children referred to the same six-month time frame when arguing there was no substantial probability of reunification.

After this argument, the court found that there was "not a substantial probability of [the children's] return *in the next period of review*." (Italics added.) It is true that the court did not expressly use the words "six months." As noted above, however, we must resolve all conflicts in support of the juvenile court's determination and indulge all legitimate inferences to uphold the court's order. Because this statement followed shortly after mother referred to the applicable statutory provision, and attorneys on both sides referred to the full six months, we infer that the juvenile court was applying the correct time frame in considering the likelihood of reunification. Indeed, because mother's counsel did not object when the court referred to "the next period of review," it appears that she, too,

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4 As noted above, the six-month review hearing was continued because mother was incarcerated.

assumed the trial court was referring to the full six months, not to the five months remaining until the 12-month review hearing.

In any event, even assuming the juvenile court was referring only to the five months remaining before the 12-month review hearing, it appears from the record that there was no reasonable probability the juvenile court would have found the children could be returned to mother within one additional month. (See *In re Celine R.* (2003) 31 Cal.4th 45, 59-60 [a judgment in a dependency case should not be set aside unless it is reasonably probable the result would have been more favorable to the appealing party but for the error].)

Turning to mother's substantial evidence challenge, mother claims "[t]here was sufficient evidence to show that there was a substantial probability that the minor[s] could be returned within the additional full six months." This statement, however, stands the applicable standard of review on its head. The question is whether there is substantial evidence to support the finding that the juvenile court actually made, not whether there is substantial evidence that could have supported a contrary finding. (See *Hope Rehabilitation Services v. Department of Rehabilitation* (1989) 212 Cal.App.3d 938, 946.)

When reviewed under the proper standard, the evidence before the juvenile court was more than enough to support the contested finding. Mother had been using drugs since she was 14 years old. And although fully aware that her children could be taken from her, she did not even begin to address her serious drug problem during the 10 months that passed between her signing of a voluntary case plan providing for substance abuse counseling and the termination of reunification services. Indeed, as the Department notes in its answer to the petition, mother promised to enroll in a drug rehabilitation program at least five times before the six-month review hearing, but she never followed through. In light of this track record, it is not surprising the juvenile court found there was no substantial probability the children could be returned to mother within six months. Substantial evidence supports that finding.

DISPOSITION

The petition for writ of mandate is denied on the merits. This opinion shall become final as to this court 10 days after its filing. (Cal. Rules of Court, rule 24(b)(3).)

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RUBIN, J.

We concur:

COOPER, P.J.

FLIER, J.